

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN LIVINGSTON,

Plaintiff Below,
Appellant,

v.

STATE OF DELAWARE,

Appellee.

§

§ No. 454, 2022

§

§ Court Below: Superior Court
§ of the State of Delaware

§

§ Cr. ID No. 1601011422 (N)

§

§

§

§

Submitted: February 27, 2023

Decided: April 3, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After consideration of the appellant's opening brief, the appellee's motion to affirm and the record on appeal, we conclude that the judgment below should be affirmed on the basis of the Superior Court's order, dated November 21, 2022, denying the appellant's motion for sentence reduction under Superior Court Criminal Rule 35(b), motion for postconviction relief under Rule 61, and motion for appointment of postconviction counsel. The Superior Court did not err in concluding that the third motion for sentence reduction was time-barred and repetitive. Nor did the Superior Court err in holding that the motion for postconviction relief was time-barred where the appellant failed to plead any of the exceptions to the Rule 61 procedural bars.

NOW, THEREFORE, IT IS ORDERED that the Motion to Affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice